



SENATE HIGHWAYS AND TRANSPORTATION	
EXHIBIT NO.	3
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January 23, 2011

Montana State Legislature
Senate Highways and Transportation Committee
PO BOX 200500
Helena, MT 59620-0500

sent via email to:
Rachel Weiss
Committee Staff, at
rweiss@mt.gov

Re: NAMIC's written comments *in support* of SB 111, An Act Limiting Liability for Noneconomic Loss Arising Out of Operation of Motor Vehicle

**** Written comments are for committee members' consideration at hearing and need not be formally read into the hearing record. ****

Dear Senator Llew Jones, Chair, Senator Jon Sonju, Vice-Chair, and committee members:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written comments for the January 25, 2011, hearing on SB 111, An Act Limiting Liability for Noneconomic Loss Arising Out of Operation of Motor Vehicle.

NAMIC is the largest and most diverse national property/casualty insurance trade and political advocacy association in the United States. Its 1,400 member companies write all lines of property/casualty insurance business and include small, single-state, regional, and national carriers accounting for 50 percent of the automobile/ homeowners market and 31 percent of the business insurance market. NAMIC has been advocating for a strong and vibrant insurance industry since its inception in 1895. NAMIC has 108 member insurance carriers doing business in the state of Montana, who write approximately 32% of the property/casualty insurance business in the state.

On behalf of NAMIC's members, I respectfully submit the following comments *in support* of the proposed legislation:

1) SB 111 may help reduce the number of uninsured drivers and drivers under the influence of drugs or alcohol on the roads of Montana

Discouraging people from operating a motor vehicle while under the influence of alcohol or drugs is of paramount importance to the safety and welfare of citizens of the state. Human behavior is often influenced by the threat of sanctions and/or deprivation of privileges, so it is reasonable for a state to fine, penalize and sanction citizens for failing to comply with state laws that promote the general welfare.

Endangering others, via the operation of a motor vehicle while under the influence of alcohol or drugs should be discouraged through all reasonable means available to the

state. Although serious criminal penalties are in place to discourage noncompliance with DUI laws and financial responsibility laws, the validity and effectiveness of the time-tested doctrine of "hitting someone in their pocketbook so as to influence their behavior" should not be undervalued.

Discouraging noncompliance with state motor vehicle financial responsibility requirements is also an important public policy objective, because of the societal and economic costs associated with uninsured motorist. Specifically, uninsured motorist pose an economic threat to the financial security of those they injure. Liability insurance coverage provides the non-at-fault injured party with compensation for their damages, to the extent of the coverage limits, thereby providing the non-at-fault injured party with a readily accessible source of money to cover their damages.

SB 111 would restrict those plaintiffs, who disregard important motor vehicle safety and financial responsibility laws, from being able to pursue a claim for damages associated with alleged past and future *noneconomic damages* as defined in subsection 5. The amendment *does not restrict* the violator of certain safety laws from being able to recover their *economic damages* resulting from a non-at-fault motor vehicle accident. All it really does is create an economic motivation for those who violate important motor vehicle safety and financial responsibility laws to start complying with the law, which could ultimately lead to a lower number of uninsured drivers and drivers under the influence on the roads of Montana.

2) The proposed legislation promotes fairness and legal responsibility

From a fairness and legal responsibility standpoint, it makes sense for a society to say to its citizens - full compliance with the law is required if you want to receive the full benefits of the law. Those who decide not to comply with the law should not be allowed to "game the system" and receive all the privileges of those who pay the costs and endure the burdens of compliance with the mandates of the law.

Since SB 111 does not restrict the violator of certain safety and financial responsibility laws from being able to recover their *economic damages*, the legislation would not create any undue economic hardship for the violator. It would merely prevent them from being able to assert claims for alleged damages associated with subjective, non-monetary losses.

The proposed legislation also creates a fairness exemption for certain uninsured motorists, so that they may still recover non-economic damages. Specifically, the proposed law states:

- (4) The limitation on liability established by this section based on a violation of the requirement for motor vehicle insurance under 61-6-301 does not apply if the person in violation: (a) was insured under a motor vehicle liability policy within 180 days before the conduct causing the death or injury occurred; and (b) has not operated a motor vehicle in violation of 61-6-301 within the 1-year period

immediately preceding the date on which coverage under the motor vehicle liability policy lapsed.

3) SB 111 may help reduce the number of frivolous legal claims filed with the courts, and help reduce the legal defense costs associated with litigation over these claims

Frivolous claims are a major legal defense cost-driver for the business and insurance industry, so NAMIC supports legislation like SB 111 that will make it less lucrative for litigants to assert legally frivolous claims. Moreover, it is sound public policy to protect those who comply with state laws and who actually pay the costs of litigation, via business operating costs and insurance premiums, from being victimized by those who refuse to comply with state law and pay the cost of state required motor vehicle financial responsibility.

Since non-economic damages, i.e. things like compensation for humiliation, injury to reputation, loss of society and companionship, inconvenience, etc, are easy to allege, difficult to quantify, and rife for litigation abuse, limiting access to these types of claims to only those who "carry their weight" societal responsibility-wise by purchasing state mandated liability coverage is reasonable and appropriate.

In closing, NAMIC respectfully requests that the Senate Highways and Transportation Committee **"VOTE YES" on SB 111**, and send a clear message to those who think they only have to comply with the laws they want to, that there is a personal price to paid for "thumbing your nose" at the system, i.e. the loss of the privilege to assert non-economic damages claims.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you have any questions about NAMIC's written comments.

Respectfully,



Christian John Rataj, Esq.
NAMIC Western State Affairs Manager